

JASON M. FRIERSON  
United States Attorney  
District of Nevada  
Nevada Bar Number 7709

R. THOMAS COLONNA  
Assistant United States Attorney  
501 Las Vegas Blvd. So., Suite 1100  
Las Vegas, Nevada 89101  
(702) 388-6336  
Richard.Colonna@usdoj.gov

*Attorneys for the United States*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Mark Trail, an individual; and Charlie Santo,  
an individual,

Plaintiffs,

v.

United States of America,

Defendant.

Case No. 3:22-cv-00028-MMD-CLB

**Order Granting Stipulation for  
Exception to Settlement Conference  
Attendance Requirements for the  
United States**

Plaintiff Mark Trail, and Defendant the United States of America, through counsel of record, stipulate and request that the Court allow Assistant United States Attorney (“AUSA”) R. Thomas Colonna to participate in the upcoming settlement conference for this case as the sole representative for the United States.

This is a personal injury case arising out of an automobile accident. The Court has set this case for a settlement conference to be held on June 21, 2023, at 9:00 a.m. (ECF No. 21). The order scheduling the settlement conference mandates that

The attorneys who will try the case, the parties, and the person or persons who have full authority to negotiate and settle the case, on any terms, must personally attend the virtual settlement conference and are required to be present on the video for the entirety of the conference without exception. This requires the presence of the attorney’s client, or if a corporate, governmental, or other organizational entity, an authorized representative of the client. For a defendant, such representative must have final settlement authority to commit the organization to pay, in the representative’s own discretion, a settlement

1 amount up to the plaintiff's prayer, or up to the plaintiff's last demand,  
2 whichever is lower.

3 ....  
4 Any exceptions to the above attendance requirements must be requested by a  
5 motion to the court no later than one-week prior to the scheduled virtual  
6 settlement conference.

7 (ECF No. 21 at 1–2).

8 The United States is unlike any other party because it is “the most frequent litigant  
9 in federal court.” *United States v. U.S. Dist. Court for N. Mariana Islands*, 694 F.3d 1051,  
10 1058–59 (9th Cir. 2012), *as amended* (Oct. 16, 2012). Because the government handles a  
11 very large number of cases, it would be impractical, if not physically impossible, for those  
12 with settlement authority to prepare for—and appear at—all settlement conferences. *Id.* at  
13 1059. The Advisory Committee notes to the 1993 amendments to Federal Rule of Civil  
14 Procedure 16 acknowledge the unique position that the federal government occupies as a  
15 litigant:

16 Particularly in litigation in which governmental agencies or large amounts of  
17 money are involved, there may be no one with on-the-spot settlement authority,  
18 and the most that should be expected is access to a person who would have a  
19 major role in submitting a recommendation to the body or board with ultimate  
20 decision-making responsibility.

21 Fed. R. Civ. P. 16 advisory committee's note.

22 The government delegates settlement authority to select individuals to promote  
23 centralized decision-making. *U.S. Dist. Court for N. Mariana Islands*, 694 F.3d at 1059–60.  
24 Centralized decision-making promotes three important government objectives. *Id.* First, it  
25 allows the government to act consistently in important cases. *Id.* Second, centralized  
26 decision-making allows the executive branch to pursue policy goals more effectively by  
27 placing ultimate authority in the hands of a few officials. *Id.* Third, by giving authority to  
28 high-ranking officials, centralized decision-making better promotes political accountability.  
*Id.* In light of these principles, the Ninth Circuit has determined that district courts should  
adopt a “practical approach” in deciding whether to require a government representative  
with full settlement authority to attend a pre-trial conference. *Id.* at 1061 (quotation  
omitted). Only as a “last resort” should the district court require an official with full

1 settlement authority to participate in a pre-trial conference in person. *Id.* (quotation  
2 omitted).

3       The ultimate authority to settle this case rests with officials at the Department of the  
4 Interior, Bureau of Indian Affairs, the United States Attorney's Office for the District of  
5 Nevada, and officials within the Department of Justice, depending on the amount  
6 involved, and whether the client agency and Department of Justice officials agree with the  
7 proposed resolution. 28 C.F.R. § 0.168(a). It is not feasible, however, for these officials to  
8 attend all settlement conferences. Moreover, AUSAs routinely participate in settlement  
9 conferences in this district as the United States' sole settlement representatives. Before the  
10 settlement conference, the AUSA discusses the case with the officials who have settlement  
11 authority to determine the range of settlement offers the United States would accept. This  
12 approach has not hampered settlement discussions or impeded settlement in the hundreds  
13 of settlement conferences in which the United States has participated over the years. In  
14 fact, hundreds of cases involving the United States have settled over the years using this  
15 approach.

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1 Accordingly, the parties stipulate and request that the Court allow AUSA R.  
2 Thomas Colonna to participate in the settlement conference as the sole representative for  
3 the United States. AUSA Colonna will brief the appropriate government officials on the  
4 case before the settlement conference to ensure the United States' meaningful participation.  
5 Should it be necessary, AUSA Colonna will provide further recommendations to  
6 appropriate government officials via telephone during the settlement conference.

7 Respectfully submitted this 13th day of June 2023.

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9 JASON M. FRIERSON  
United States Attorney

KIDWELL & GALLAGHER, LTD.

10 /s/ R. Thomas Colonna  
11 R. Thomas Colonna  
12 Assistant United States Attorney  
13 501 Las Vegas Blvd. So., Suite 1100  
Las Vegas, Nevada 89101  
*Attorney for Defendant*

/s/ Barbara W. Gallagher  
Barbara W. Gallagher, Esq.  
Nevada Bar No. 5315  
790 Commercial Street  
Elko, Nevada 89801  
*Attorney for Plaintiff*

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16 **IT IS SO ORDERED:**

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18 **UNITED STATES MAGISTRATE JUDGE**

19 **DATED:** June 13, 2023  
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